

received a copy of this petition through service or otherwise.¹ Therefore, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

4. Because Fear has not been properly served, her consent is not necessary for this removal. However, to the extent necessary, Fear consents to the removal of this action. Accordingly, the requirement that all defendants consent to removal is satisfied.

II. BASIS FOR REMOVAL

5. Venue is proper in this District under 28 U.S.C. § 1441(a) because the state court where the action is pending is located in this District.

6. Removal is proper under 28 U.S.C. § 1332(a) if there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interest, costs and attorneys' fees. These two conditions are satisfied in this matter.

A. Removal is Proper Because Complete Diversity of Citizenship Exists Between Plaintiff and Defendants.

7. Plaintiff was, at the time this lawsuit was filed, and at the date of this Notice remains, is a Texas Corporation and is a citizen of Texas for purposes of diversity of citizenship.²

8. Weston was, at the time this lawsuit was filed, and at the date of this Notice remains, a foreign corporation organized under the laws of the State of Florida, with its principal place of business in Florida. Thus, Weston is a citizen of Florida.

¹ Weston has not yet been served and there is no return of service on file with the state court. Weston learned of the filing of the lawsuit on May 22, 2019, and obtained a copy of the Petition from the state court's website on May 23, 2019. There is a Return of Service on file with the state court with regard to Rachel Fear, but that service is defective, as the address listed for Ms. Fear is incorrect. As evidenced by the lack of her signature on the return receipt, she has not been properly served.

² See Plaintiff's Original Petition, attached as Exhibit B at, p. 1, ¶ I.

9. Fear is an individual domiciled in the state of Florida and is citizen of Florida for purposes of diversity of citizenship.

10. Because Plaintiff is a citizen of Texas and Defendants are residents of Florida, complete diversity exists between Plaintiff and Defendants (now and on the date Plaintiff filed this lawsuit).

B. Removal is Proper Because Plaintiff's Claimed Damages Exceed This Court's Jurisdictional Threshold of \$75,000.

11. Here, Plaintiff's Original Petition states that the unpaid cost to repair the property is \$1,485,216.23.³ It is thus facially apparent that Plaintiff's claims, exclusive of interest, costs, and attorneys' fees, exceed this Court's jurisdictional threshold of \$75,000.⁴

**III.
COMPLIANCE WITH 28 U.S.C. §1446**

12. In accordance with 28 U.S.C. § 1446(a) and Local Rule 81.1, Weston files this Notice of Removal accompanied by the following exhibits:

- All executed process⁵ in this case, attached as Exhibit A;
- Plaintiff's Original Petition, attached as Exhibit B;
- State Court Docket Sheet, attached as Exhibit C;
- An index of matters being filed, attached as Exhibit D; and
- List of all counsel of record, attached as Exhibit E

**IV.
JURY DEMAND**

13. Plaintiff demanded a jury trial in the state court action.

³ See Plaintiff's Original Petition, Exhibit B at p. 10, ¶ XII.

⁴ *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1999).

⁵ As mentioned earlier, citation has been issued for Rachel Fear, but the return of service on file is defective.

V.
CONCLUSION

14. Because there is complete diversity between the parties, and the amount in controversy exceeds \$75,000, removal of this action is proper under 28 U.S.C. § 1332(a).

15. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice, and Weston will promptly file a copy of this Notice with the clerk of the state court where the action is pending.

WHEREFORE, Defendant Weston Insurance Company hereby provides notice that that this action is duly removed from the 36th Judicial District Court, Aransas County, Texas to the United States District Court for the Southern District of Texas, Corpus Christi Division and requests that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

By: /s/ Kristin C. Cummings
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served this 3rd day of June, 2019, in accordance with the Federal Rules of Civil Procedure, by electronic filing as follows:

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